

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of**

**Digital Output Protection Technology  
and Recording Method Certifications**

**D-VHS**

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**MB Docket No. 04-68**

**RESPONSE TO THE APPLICATION OF VICTOR COMPANY OF JAPAN FOR  
INTERIM AUTHORIZATION OF D-VHS BY THE MOTION PICTURE  
ASSOCIATION OF AMERICA, INC., METRO-GOLDWYN-MAYER STUDIOS INC.,  
PARAMOUNT PICTURES CORPORATION, SONY PICTURES ENTERTAINMENT  
INC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL CITY  
STUDIOS LLLP, THE WALT DISNEY COMPANY, AND WARNER BROS.  
ENTERTAINMENT INC.**

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The Motion Picture Association of America, Inc., Metro-Goldwyn-Mayer Studios Inc., Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, The Walt Disney Company, and Warner Bros. Entertainment Inc. (the “MPAA Parties”) hereby file this response to the application of Victor Company of Japan (“JVC”) to have its D-VHS format and related copy protection system (“D-VHS”) be approved on an interim basis as an Authorized Recording Method for use in protecting Marked and Unscreened Content (the “Application”). The MPAA Parties express support for the Application upon the expectation that JVC will respond and/or clarify the issues raised below in its reply filing.

We note at the outset that this proceeding, and the Commission’s review of the content protection technologies, related functionalities, and licenses submitted in this proceeding, are concerned only with whether the proposal meets the interim requirements the Commission

identified for the protection of digital broadcast television content. This response, therefore, is based on the understanding that if the Commission decides to authorize D-VHS on an interim basis for use in protecting Marked and Unscreened Content, that authorization extends only to the use of D-VHS in the Broadcast Flag application.<sup>1</sup> In addition, we have reserved comment on the bulk of licensing terms, trusting that the marketplace negotiations of the agreements will produce acceptable business terms.

D-VHS is an example of the value of the marketplace criteria advocated repeatedly by the MPAA and others in the Broadcast Flag proceeding.<sup>2</sup> Further, D-VHS is expressly named in the DTCP license for use in protecting “New Release Content,” as that term is defined in the “Joint Proposed Criteria” for authorization of a digital output protection technology proposed by the MPAA and numerous others. *See* Attachment C of the Joint Comments of the MPAA *et al.*, MB Docket No. 02-230 (filed Dec. 6, 2002). Under the Joint Proposed Criteria, if DTCP is authorized on an interim basis for inclusion in DTV devices, D-VHS would be also. In addition, and importantly, as set forth in the Joint Proposed Criteria and elsewhere, any content protection technology must limit redistribution to the device’s “local environment” (i.e., the set of compliant, authorized devices within a tightly defined geographic area around a Covered Product) through the use of reasonable and affirmative constraints. D-VHS places reasonable and affirmative limits on the scope of redistribution of Marked and Unscreened Content because

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<sup>1</sup> For example, the interim authorization of a content protection technology would not determine in any way whether that technology appropriately protects content with copy restrictions delivered through high-definition analog outputs, which was not the subject of the Broadcast Flag proceeding.

<sup>2</sup> As the 5C companies, the MPAA, and other content providers stated in comments filed earlier in the Broadcast Flag proceeding, the Commission should adopt standards and procedures that implement “a flexible, market-based approach under which a technology is authorized for Table A if it has been accepted in the relevant marketplace as a protection technology or it is just as effective as one that has.” Joint Comments of the MPAA *et al.*, MB Docket No. 02-230, at 22 (filed Dec. 6, 2002); *see also* Comments of the Digital Transmission Licensing Administrator LLC (“5C”), MB Docket No. 02-230, at 10 (filed Dec. 6, 2002).

it cryptographically binds the content to the recordable media<sup>3</sup> and then authorizes only protected digital outputs during playback that provide effective redistribution control.

The MPAA Parties request that JVC respond to and/or clarify the following issues in its reply filing in a satisfactory manner to facilitate approval of D-VHS technology by the Commission in this proceeding.

**I. JVC Should Clarify That D-VHS Imposes No Obligations on Content Providers, Broadcasters, Consumers, or Others**

The D-VHS technology could become one of many technologies included in the Broadcast Flag system. All approved technologies will receive broadcast content marked with the Broadcast Flag and may be invoked or “triggered” in response to the Broadcast Flag in various devices, such as set top boxes and digital video recorders. Content providers, broadcasters, and others currently cannot direct which approved technologies may receive broadcast content marked with the Broadcast Flag or which approved technologies may get triggered by the Broadcast Flag. Because content providers, broadcasters, and others exercise no direct control over the actual use of D-VHS (or any of the other potential Broadcast Flag technologies), JVC should clarify that broadcasters, content providers, and others who do not take a license to the D-VHS technology but who mark or broadcast content with a Broadcast Flag that triggers the D-VHS technology are not subject to any obligations to JVC, including but not limited to intellectual property licensing obligations. Furthermore, JVC should certify, as a

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<sup>3</sup> Without prejudice to the legal rights of content owners, the Broadcast Flag system does not constrain the movement of removable physical recordings of Marked or Unscreened Content. That is due both to the limits of technology and, most importantly, to the tedium, cost, delay, “one-to-one” nature, and related practical factors that severely limit the occasions and impact of physical transfer. The extraordinary ease, immediacy, extensibility, and both direct and aggregate “one-to-many” breadth of digital *re-transmission* is another matter entirely, as clear and distinct as the difference between mailing a VHS or other copy of a movie to a friend and *broadcasting* the same movie to an audience or group through open or closed circuit. As indicated above, the proposed secure recording technology and accompanying license include reasonable and effective restrictions on such retransmission from the recordings.

condition of interim authorization, that no consumer transmitting or receiving content marked with the Broadcast Flag signal will incur any claim of obligation from JVC.

## **II. D-VHS Must Assert Upstream Controls Over Downstream HDCP Functions**

JVC has identified HDCP as a protected digital output downstream from D-VHS. Due to the unique operational aspects of the HDCP technology, if JVC's content protection technology authorizes HDCP as a protected downstream output, any Covered Demodulator Product using JVC's technology must assert upstream control of the flow of Marked and Unscreened Content being sent to a HDCP function. This is because the HDCP function can not assert control over the output of (or prevent the delivery of) Marked and Unscreened Content to an HDCP device, but can only signal upstream to the JVC's content protection technology when the HDCP function is actively engaged and able to deliver protected content. The HDCP technology then relies on the upstream content protection technology to turn off the flow of content when it receives this message from the HDCP function.

In order to ensure the security of a system with multiple devices and in particular the effectiveness of any revocation process, if HDCP is an authorized downstream output from D-VHS technology, as part of the D-VHS licensing terms, JVC should require adopters manufacturing a Covered Demodulator product to ensure that it asserts this upstream control function.

For example, adding the following language to the compliance rules could accomplish this:

A Covered Demodulator Product may pass Marked or Unscreened Content to an HDCP protected DVI or HDMI output, only if such Covered Demodulator Product (a) reads the received HDCP System Renewability Message, if present, and passes it to the HDCP Source function as a System Renewability Message, and (b) verifies that the HDCP Source Function is engaged and able to

deliver Marked and Unscreened Content in protected form, which means (i) HDCP encryption is operational on such output, (ii) processing of the valid received System Renewability Message associated with such content, if any, has occurred as defined in the HDCP Specification and (iii) there is no HDCP Display Device or Repeater on such output whose Key Selection Vector is in such System Renewability Message. Capitalized terms used in the foregoing but not otherwise defined in the Specifications or the License shall have the meaning set forth in the HDCP Specification and HDCP License Agreement offered by Digital Content Protection, LLC.

### **III. The Terms of the D-VHS License Agreement Must Apply to JVC and Its Affiliates**

An owner of a technology or a member of a technology consortium may have the ability under the consortium's rules to use the technology in its own products free of obligations or without taking a license. Alternatively, the member may control sufficient intellectual property to license decryption in downstream products independent of the consortium. Or a member may manufacture its own devices and not license the technology. JVC should clarify that for any use of the D-VHS technology, JVC, its affiliates, and members of any consortium to which JVC contributes D-VHS intellectual property are obligated to comply with the compliance and robustness rules of the D-VHS license agreement equivalently to any other Adopter licensee of the D-VHS technology. Article 1(E) of the D-VHS content participant agreement addresses this issue with respect to computer peripherals, and we would request that JVC modify and clarify to addresses the broader concerns herein.

### **IV. The Means of Handling Revocation Lists Should Be Addressed**

In order to effectuate revocation, it is necessary that a standardized means for delivering revocation information in the ATSC transport stream is developed and that FCC approval of any protected digital output and secure recording technology include obligations that Covered Demodulator Products and downstream devices properly receive, preserve, process, and convey

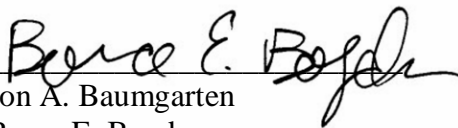
downstream, as appropriate, such information. In its reply, JVC should explain how it will deal with this issue.

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We look forward to JVC's satisfactory responses on these issues, and to the Commission's ultimate authorization of D-VHS and its related copy protection system on an interim basis for use in protecting digital broadcast content under the Broadcast Flag regulation.

Respectfully submitted,

THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.  
METRO-GOLDWYN-MAYER STUDIOS INC.  
PARAMOUNT PICTURES CORPORATION  
SONY PICTURES ENTERTAINMENT INC.  
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